



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 24, 1995

Mr. Tracy Pounders  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR95-094

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31366.

The City of Dallas (the "city") received a request to inspect "any and all documents, letters and memoranda concerning federal legislation affecting the regulation of motor carriers transporting property (Transportation Regulation) referenced on the Jan. 4, 1994 City Council Briefing Agenda, Executive Session." You assert that pursuant to sections 552.107(1) and 552.111 of the Government Code, the city may withhold from required public disclosure a memorandum from the city attorney, which includes "guidelines" that apparently were or will be distributed to affected departments, and briefing notes used by an assistant city attorney to brief the city council while it met in executive session.

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5; 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5. Consequently, a governmental body may not withhold documents in their entirety under this exception, but only information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574.

We agree that the information at issue contains attorney advice and opinion that the city may withhold based on section 552.107(1) of the Government Code. The information also contains some factual information, including the "guidelines." This factual information does not appear to be a client confidence. You do not assert that the information constitutes client confidences. Thus, the factual information is not excepted from disclosure under section 552.107(1).

Nor is this factual information excepted from required public disclosure under section 552.111 of the Government Code, since the protection of section 552.111 does not extend to factual information.<sup>1</sup> See Open Records Decision No. 615 (1993). Thus, the factual information must be released. We have marked the documents accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

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<sup>1</sup>Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. See Open Records Decision No. 615 (1993).

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" written in a larger, more prominent script than the last name "Guajardo".

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 31366

Enclosures: Marked documents

cc: Ms. Nancy Moffett  
3114 Mapleleaf Lane  
Dallas, Texas 75233  
(w/o enclosures)